

(2013) 07 BOM CK 0184

In the Bombay High Court

Case No : Criminal Writ Petition No. 1111 of 2012

Gotya @ Raju Durgya Jadhav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432

Citation : (2013) ALLMR(Cri) 4006 : (2013) 4 BomCR(Cri) 105

Hon'ble Judges : Naresh H. Patil, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.A. Dhengle, for the Appellant; A.V. Gondhalekar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Rule. Rule returnable forthwith. Matter is heard finally with the consent of parties. The Petitioner - Convict is challenging the decision of the State, dated 30.10.2012, which is an order passed u/s 432 of the Code of Criminal Procedure, 1973. The State has considered the facts and particulars of the offence proved against the petitioner as well as the law and relevant Circulars, put petitioner in Category 2(c) prescribing period of imprisonment as 26 years as specified in Annexure I of Government of Maharashtra Resolution No. RLP-1006/C.R. 621/PRS-3, dated 15th March 2010. The guidelines deal with premature release under "14 Year Rule" of Prisoners serving life sentence.

2. The petitioner has moved this Court claiming that he has been put in wrong category and that the Circular No. RLP-1092/13/252/PRS., dated 11th May 1992 should have been relied on as in the said Circular, there was no category for offence relating to burns. If that Circular would have been relied on, he could have been put in the Category of 1(c) of the said Circular and could have got benefit calculated on the basis of period of 24 years.

3. We have perused the judgment and order of the trial Court. The petitioner was

convicted in Sessions Case No. 44/1999 by Additional Sessions Judge, Baramati vide judgment and order dated 26.6.2001. The judgment shows that the offence proved against the petitioner was relating to burning his wife Kalpana on 25.7.1998. The allegation was that, when his wife Kalpana was washing clothes in the bathroom, the mother of petitioner (who was accused No. 2), went there and poured kerosene on the person of Kalpana and the present petitioner lighted a match stick and set Kalpana on fire. When Kalpana raised shouts, it was the neighbours who intervened. The Sessions Judge found that the petitioner along with his mother had intentionally and knowingly committed the murder of Kalpana.

4. State has filed affidavit-in-reply. Reference has been made to the relevant provisions of Government Resolution dated 11.5.1992 as well as Government Resolution dated 15.3.2010 and it is stated that, Government has considered the concerned judgment of the Sessions Court and came to the conclusion that the case of petitioner falls in the Category of 1(e) of the 1992 guidelines and under Category 2(c) of the guidelines of 2010 and so, the petitioner is not entitled to any benefit. By impugned order, he has been put in Category 2(c) of guidelines of 2010.

5. Relevant part of the Government Resolution dated 11.5.1992 is as follows:

Categorisation of crimes

Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment period.

1. MURDERS RELATING TO SEXUAL MATTERS OR ARISING OUT OF RELATIONS WITH WOMEN, DOWRY DEATHS AND OTHER FORM OF BRIDE KILLING ETC.

a)

Where the convict is the aggrieved person and has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.

22 Years

b)

Where the crime as above is committed by the aggrieved person with premeditation

24 Years

c)

Where the crime is committed against the aggrieved person without premeditation

24 Years

d)

Where the crime is committed against the aggrieved person with premeditation

26 Years

e)

Where the crime is committed with exceptional violence or with perversity

28 Years

The relevant chart in respect of G.R. dated 15.03.2010 is as follows:

Category No.

Sub-Category No.

Categorization of crime 1

Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period

2

OFFENCES RELATING TO CRIME AGAINST WOMEN AND MINORS

a)

Where the convict has no previous criminal history and has committed the murder in a individual capacity in a moment of anger and without premeditation

20

b)

Where the crime as mentioned above committed with premeditation

22

c)

Where the crime is committed with exceptional violence and or with brutality or death of victim due to burns

26

6. It has been argued on behalf of the petitioner that he should have been treated as falling in the category 1(c) of the 1992 Resolution and it should have been held that the crime was committed without premeditation and so, the period of imprisonment should be calculated as 24 years, It is argued that, in the Resolution of 1992 there was no separate category for offence where the crime was committed in which victim suffered burn injuries.

7. We are not impressed by the arguments advanced by learned counsel for the petitioner. In the Government Resolution of 1992, Category 1(e) had category of

crime "Where the crime is committed with exceptional violence or perversity". In the resolution of 2010, this category has been modified as 2(c) with the words "Where the crime is committed with exceptional violence and/or with brutality or death of victim due to burns". The State has rightly categorised crimes where death of victim is caused by burns, at par with crimes where there is exceptional violence and/or brutality. No doubt, in the Government Resolution of 1992, there was no separate category for bride killing by burning. However, that does not mean that where death of the victim has been caused by burning, the crime at that time was in any way less so as not to attract category of "exceptional violence". In our view, even if Government Resolution of 1992 is to be resorted to where the victim suffered death due to burning, it should be treated as crime with exceptional violence falling in Category 1(e).

8. For the above reasons and also looking to the facts of the extent matter, we do not find any substance in this petition. The impugned order passed by the State needs to be maintained.

9. In the result, writ petition is dismissed. Rule discharged. The Secretary, High Court Legal Services Sub-Committee, Aurangabad shall pay fees of the learned counsel appointed for the petitioner.